

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1996-318-C - ORDER NO. 2011-785
OCTOBER 26, 2011

IN RE: Establishment of Interim Local Exchange)	ORDER DENYING
Fund to Address Revenue Impact on)	PETITION FOR
Incumbent Local Exchange Carriers Electing)	RECONSIDERATION OR
to Reduce Toll Switched Access Rates)	REHEARING

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Petition of the South Carolina Cable Television Association (“SCCTA”) for Reconsideration or Rehearing of this Commission’s Order No. 2011-543, which denied consolidation of the Interim Local Exchange Carriers Fund (“ILF”) into the South Carolina Universal Service Fund (“USF”). In that Order, we held that since funding for the USF is neither finalized nor adequate to support the obligations of the ILF, consolidation of the ILF into the USF is inappropriate at this time under South Carolina law, specifically S.C. Code Ann. Section 58-9-280(M) (Supp. 2010), which sets out these two requirements before consolidation of the two funds. We have examined the SCCTA Petition. However, we are not persuaded that reconsideration or rehearing of our Order is warranted. Accordingly, we deny the Petition.

In Order No. 2011-543, this Commission provided two reasons for its decision: (1) the federal Universal Service Fund (“federal USF”) may be changed, thus affecting the South Carolina Universal Service Fund, and (2) consolidation would cause a \$32

million tax increase to the people of South Carolina, therefore the State USF is clearly inadequate at this time to support the obligations of the ILF.

First, SCCTA argues that changes in the federal USF would not impact the State USF, because it argues that the State USF takes into account changes in federal funding, and that changes in federal USF funding would not impact the monies paid under the State USF, unless the incumbent LECs choose not to file requests for revisions in their subsidy amounts. These arguments miss the mark, since they relate to changes in the amount of federal USF as it is currently structured. As we related in our Order, “there are forces at work in Washington, DC that may change the entire character of the Universal Service Fund at the federal level, and this could force a change in character of the USF at the State level. Order at 2. (emphasis added). As is evident from public documents, including a Federal Communications Commission’s (“FCC’s”) Notice of Proposed Rulemaking, the FCC is poised to consider comprehensive structural reform to the federal USF and Intercarrier Compensation mechanisms, which could significantly impact the State USF. As we noted in Order No. 2011-543, that change is scheduled to be considered by the FCC by the end of this year. In fact, a proposed FCC Order is being circulated and is on the FCC’s agenda for consideration at its October 27, 2011, meeting. See News Release dated October 6, 2011 entitled “FCC Announces Tentative Agenda for October Open Meeting.” Accordingly, the State USF is not “finalized,” since the character of the federal USF may well be changed. This change will certainly have an effect on the character of the State USF. We discern no error in our initial ruling in this area.

Second, SCCTA alleges that the Commission somehow “exceeded its statutory authority” by refusing to consolidate the ILF into the USF because of the “tax increase” aspects of the change. It is clear that the South Carolina General Assembly created the ILF and the State USF for different purposes, with different sets of contributors. While the General Assembly contemplated that the ILF must be transitioned into the State USF, this transition is clearly contingent on the funding for the State USF being finalized, as discussed above, and adequate to support the obligations of the ILF. As was stated, the State USF is certainly not finalized. Moreover, the State USF is clearly inadequate at this time to support the obligations of the ILF.

Since there are different sets of contributors to the two funds, i.e. carriers that received an access or interconnection rate reduction as a result of local exchange carriers lowering their intrastate toll switched access charges who fund the ILF, and the end-user telecommunications service customers who fund the State USF, this Commission clearly had the right within our statutory authority to consider the effect of the proposed transition on the contributor base of the State USF when considering whether or not the State USF was adequate to support the obligations of the ILF.

The “tax increase” discussed in our last Order, while not essential to our ruling, is really describing the fact that telephone company ratepayers will have to pay an additional amount into the USF to cover the monies for the Interim LEC Fund portion of the State USF. This is clearly comparable to a “tax increase,” although we hereby modify the language of our original Order to hold that such a move would be “akin to a \$32 million tax increase to the people of South Carolina.” Regardless, this word-smithing

does not change the fact that such an increase demonstrates that the USF is not adequate at this time to support the obligations of the ILF. Again, we affirm our original ruling in this area.

The SCCTA Petition also states that the Commission's refusal to transition the ILF into the USF means that South Carolina will maintain a system of supporting universal service that violates federal and state statutory provisions. This assumption ignores the clear intent of the South Carolina General Assembly in creating two funds for two separate purposes, again, funded by different contributors as discussed above. As shown below, despite the fact that the General Assembly calls for transitioning the ILF into the State USF after certain conditions have been met, the General Assembly recognizes only the State USF as a universal service support mechanism.

The ILF was created by the General Assembly to allow companies with high intrastate toll switched access rates to lower those rates to levels comparable to those of the largest LEC operating in the State. This would provide access rate comparability and reduce the opportunity for access rate arbitrage, among other things. The General Assembly directed that the ILF established by the Commission would initially be funded by those entities receiving an access or interconnection rate reduction from local exchange carriers, in proportion to the amount of the rate reduction. S.C. Code Ann. Section 58-9-280(L) and (M) (Supp. 2010). In contrast, the State USF was created to "continue South Carolina's commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs." S.C. Code Ann. Section 58-9-280(E) (Supp. 2010). The General

Assembly directed the Commission, consistent with federal law governing the establishment of state universal service mechanisms, to “require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the Commission.” S.C. Code Ann. Section 58-9-280(E)(2) (Supp. 2010).

Clearly, because of the distinctions described above, our previous decision in Order No. 2011-543 does not result in South Carolina maintaining a system of supporting universal service that conflicts with state and federal law. The SCCTA allegation to the contrary is without merit.

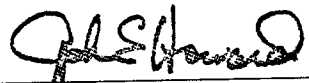
Lastly, SCCTA alleges that our prior Order is not sufficiently detailed to determine whether the law has been properly applied to its findings and conclusions. This allegation is also without foundation. The question before this Commission is a simple one: Is funding for the State USF finalized and adequate to support the obligations of the Interim LEC Fund? Based on the information presented to us, this Commission concluded that the State USF was neither finalized, nor was it adequate to support the obligations of the Interim LEC Fund. The Commission clearly indicated its bases for its conclusions. The reasons are clearly supported by the record and the law. Thus, this additional ground asserted by the SCCTA Petition must be rejected.

Because of the reasoning discussed above, the SCCTA Petition is hereby denied and dismissed, although we do order the indicated change in the “tax increase” language. We reaffirm our prior holding that funding for the USF is neither finalized nor adequate to support the obligations of the ILF at this time. Therefore, the ILF should not be

transitioned into the State USF at this time.

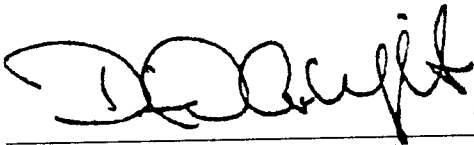
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman
(SEAL)